

# COUNTY OF YORK

## MEMORANDUM

**DATE:** July 6, 2005 (BOS Mtg. 7/19/05)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Authorization for extension of due date of \$1,000,000 note from the Economic Development Authority (EDA) to the County—Relocation and renovation of the Yorktown Freight Shed

You will recall that, in connection with the relocation and renovation of the Yorktown Freight Shed, the County agreed to lend to the Industrial Development Authority (now renamed as the Economic Development Authority) and the EDA in turn agreed to lend to Yorktown Freight Shed, LP, the entity formed to hold title to the Freight Shed, the sum of up to \$1,000,000 to pay for all costs associated with the relocation and renovation of the Freight Shed building. Each loan was evidenced by a note bearing interest at the rate of 5.5% per annum, due and payable on or before December 1, 2008. As of December 2001, when the two notes were executed and the loans initiated, it was deemed that the due dates would encompass all of the period of time during which the applicable federal and state Historic Building Renovation Tax Credit laws would require the building to be owned by Yorktown Freight Shed, LP. Now that the renovation of the building is nearly complete, and closing has been had on the sale of the limited partnership interest to the private investor, we have been advised by the law firm of Kutak Rock, tax adviser for this transaction, that the due dates of the two notes need to be extended.

The attached resolution, if adopted, will authorize the County Administrator to execute a necessary "allonge" to the note from the EDA to the County, extending the due date to July 1, 2012. A similar allonge will be executed relative to the note between Yorktown Freight Shed, LP and the EDA. The extension of the due date of the note means among other things that the partnership will not fall into technical default on the note until after such time as the limited partnership interest of the private investor has been liquidated approximately 61 months hence, for a nominal sum of \$100. Under the terms of the limited partnership agreement, as we have been advised is required by applicable tax laws, the limited partnership would have the right to replace the general partner and take control of the building if the partnership were to commit an act of default during the period of time that the private investor remains a limited partner. A default on the note to the EDA by the limited partnership would be just such an act of default, vesting the limited partner with more control over the project than is desired. By extending the term of the note, the limited partnership will not fall into technical default until such time as the private investor is no longer involved as a partner. At some point thereafter, the limited partnership will liquidate its debt to the EDA by transferring to it all of the partnership's assets, and the EDA in turn will convey those assets to the County. In such fashion, the title to the Freight Shed will be conveyed to the County of York.

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I recommend the adoption of the attached resolution.

Barnett/3440:swb  
Attachment

- Resolution No. R05-119